BEFORE THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

Appeal No. 9 *of* 1905-06.

Appellant	*Versus*	*Respondent*
Boregowda, son of Boregowda of Sambunahalli village, French Rocks Sub-Taluk		Marigowda, son of Chikkegowda.

Subject.

Appeal against the order of the Deputy Commissioner of the Mysore District, directing the registry of the pateli baraward of Sambunahalli village in the French Rocks Sub-Taluk, in the name of the respondent.

The facts of the case appear sufficiently from the following :—

Decision.

One Chennegowda and Boregowda were brothers. The patell of the village in question appears to have originally stood in their joint names while the duties thereof were being performed by one Chikkegowda, the son of the former. Chennegowda was the first to die. Chikkegowda and Boregowda next died about the same time, that is, in the year 1877-78. The respondent Marigowda, the son of Chikkegowda, has since been in sole possession and enjoyment of the office. Appellant Boregowda is the son of the joint barawardar Boregowda. He was a minor when his father died. But he preferred no claim to the office for some fourteen years after the attainment by him of his majority. Neither he nor his father was thus ever in possession. In 1902, the respondent applied that, as he was a sickly person, the office might be transferred to a son of his named Bora. This led to an enquiry in the course of which the appellant for the first time set up a title of his own on the ground of his father having once been a joint barawardar. The Deputy Commissioner declined to recognise this title, nor did he consider a transfer from the respondent to his son really called for. The office has thus been formally registered in the name of the respondent who, as already observed, has held it continuously and without interruption for nearly thirty years past. The appellant is only a hissedar, being a member of the younger branch of the family. He cannot successfully claim possession either jointly with the respondent or to his exclusion. The village moreover is too small for two patels. Nor, again, do the circumstances of the case warrant an arrangement involving retatory performance of the duties of the office by both the parties. For these reasons, Government have no hesitation in holding that the Deputy Commissioner has arrived at a correct decision and that there are no grounds for any interference therewith.

The appeal fails and is accordingly rejected.

No. R. 9081—*R. M.* 749-04-4, *dated* 3*rd January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District, together with the records received with his letter No. 37, dated the 12th July 1905.

Appeal No. 35 *of* 1905-06.

Appellant	*Versus*	*Respondent*
Lakshmegowda		Hutchegowda.

Subject.

Claim to the pateli office (Municipal Section) of Kasaba Nagamangala.

The facts of the case appear sufficiently from the following decision :—

Decision.

The parties appear to belong to the same family, the respondent being the grandson of the first and the appellant, the grandson of the second, sons of a common ancestor by name Mudde Gowda. The appellant's grandfather Kempe Gowda held the office of patel of Nagamangala from 1867 to 1874, when on his death he was succeeded by one of his sons, Lakshmana, with the consent of his other son Mudda. On Lakshmana's demise in 1884 his son, the present appellant, was appointed to the office in 1884. Owing to the appellant's minority his uncle, the above named Mudda, was first appointed his gumasta, and on the latter's death and shortly after the gumastaship was conferred on the respondent who, both then and on several subsequent occasions, the last being in 1893, agreed to hold the office on behalf of the appellant and to surrender the same to him on his attaining majority. The appellant having recently ceased to be a minor claimed possession of the office from the respondent. The latter, however, resisted the claim on the ground that being a descendant of the elder branch of the family, he could not be superseded in favor of the appellant who belonged to the junior branch of it. He further contended that in any case, the village being a large one, he should be left in undisturbed possession of a portion of the pateli duties appertaining thereto, namely the Municipal and cattle-pound sections thereof. The Sub-Division Officer rejected the respondent's contention and directed that the pateli should revert *in toto* to the appellant who was the barawardar while the respondent was only his gumasta. In appeal, the Deputy Commissioner while recognizing the appellant's title, held that the village was too big a charge for a single individual and that therefore the respondent's alternative contention should be allowed. Hence this appeal.

2. Government are of opinion that the order made by the Deputy Commissioner is erroneous and unsustainable. It is now unnecessary to go into the question why in the remote past, the office came to be held by the members of the younger branch in preference to those of the

elder. Suffice it to say that there is absolutely no justification for the reversal of an arrangement which has existed without interruption for some forty years past. The respondent's change of front cannot be countenanced. Admittedly he got in as the appellant's gumasta on the distinct understanding that he would vacate as soon as the appellant ceased to be under a disability. So recently as 1893, he deposed in unequivocal language that he was prepared to abide by the terms of his original appointment. That being so, his present attitude is most unreasonable. To all intents and purposes the village is a single charge. The respondent is bound to give it up to the appellant on whose behalf he has held it for some years. Whether administrative necessities demand the making of a separate arrangement for the more satisfactory performance of the Municipal portion of the pateli duties is a question which has to be dealt with independently of the present litigation which merely involves the transfer of the office from the gumasta to his principal. The Deputy Commissioner has laid some stress on the fact of the respondent's long possession, but he has evidently overlooked the circumstance that that possession was permissive and not hostile. Government see no reason why the appellant who is no longer under a disqualification should be kept out of the whole or any portion of his rights at the instance, and for the benefit of the respondent.

3. For the above reasons, the Deputy Commissioner's order is set aside and that of the Sub-Division Officer restored.

No. R. 9012—*R. M.* 811-04-4, *dated* 30*th December* 1905.

Copy of the above is forwarded to the Deputy Commissioner, Mysore District, together with the records received with his letter No. 262, dated the 31st August 1905.

Appeal No. 136 *of* 1904-05.

Appellant Anneppa.

Subject.

Appeal against the order of the Deputy Commissioner of the Mysore District, affirming that of the Assistant Commissioner (Jamabandi Officer) directing the levy of full assessment from the appellant for the period he has been cultivating magi No. 205 of Badanavalu village in the Nanjangud Taluk claimed by him as his Inam land but included into the tank bed and classed as kharab at the time of the settlement.

Decision.

The facts of the case are very simple. Magi No. 205 was a wet land which, along with certain dry lands, was at the Inam Settlement confirmed on a consolidated quit-rent of Rs. 13 to one Subhadra Bayi and Yamana Bayi whom the appellant Anneppa now represents. At the Survey Settlement which took place in 1900, this land (wet portion of the inam) was treated as kharab and included in the bed of the Narsambudhi tank to the whole of which was given a single survey number namely 376. The appellant was evidently not a consenting party to this inclusion notwithstanding which he continued to cultivate and enjoy the land until 1902-03 when, on a report made to him by the Taluk authorities, the Jamabandi Officer directed the levy of full temporary assessment from the occupant pending final orders on the question of his right to hold the land free of assessment in spite of its situation with reference to the tank. The Deputy Commissioner to whom an appeal was preferred, declined to interfere on the ground that the appellant ought not to have cultivated the land without previous permission in that behalf. Hence this appeal. It may be noted that the enforced levy continues regardless of the appellant's protest.

2. There can be no doubt that the title recognized by the Inam Settlement continues in force and that the mere inclusion of the land in the tank bed at the subsequent Survey Settlement does not convert an authorized and rightful possession into an unauthorized and wrongful one. If in the interests of the tank, any interference with vested private rights is deemed desirable, the proper course for Government to adopt is to buy up those rights in the manner prescribed by law so long as no such acquisition is made the appellant is entitled to enjoy the land by payment of quit rent with such khalsat for the excess, if any, as might be imposed under standing orders. He can neither be summarily dispossessed nor prevented from cultivating the land, nor compelled to pay any assessment over and above the quit-rent and khalsat due under the title deed and Khalsat Rules. He has thus a valid grievance.

3. The orders of the Assistant Commissioner and Deputy Commissioner will therefore be reversed and the appellant's possession under the title deed directed to be left undisturbed until he is bought out and evicted in accordance with law. The assessment which he was under no legal obligation to pay and which nevertheless was recovered from him, by way apparently of fine, should be refunded to him.

No. R. 8952-3—*R. M.* 423-04-7, *dated* 30*th December* 1905.

Copies of the above are forwarded to (1) the Survey Commissioner in Mysore, with reference to his letter No. 45, dated the 3rd October 1905, and (2) to the Deputy Commissioner, Mysore District, together with the records received with his letter No. 1003, dated the 8th May 1905.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.